

*In the Matter of Hemaben Bhavsar and Yogeshkumar Bhavsar,
Senior Engineer Transportation (PS4833T), Senior Engineer Geotechnical
(PS4831T), Senior Engineer Structural Evaluation (PS4832T) and
Senior Engineer Traffic (PS4892T), Department of Transportation
DOP Docket Nos. 2006-1129 and 2006-1133
(Merit System Board, decided February 8, 2006)*

Hemaben Bhavsar and Yogeshkumar Bhavsar appeal their disqualifications from the promotional examinations for Senior Engineer Transportation (PS4833T), Senior Engineer Geotechnical (PS4831T), Senior Engineer Structural Evaluation (PS4832T) and Senior Engineer Traffic (PS4892T), Department of Transportation. These appeals have been consolidated due to common issues presented.

By way of background, the subject examinations were administered on May 21, 2005 and consisted of a total of 175 multiple-choice problem-solving questions. Hemaben Bhavsar and Yogeshkum Bhavsar, who are brother and sister, participated in the subject examinations and were both assigned to take the test in room "C" at the Woolverton Avenue examination center in Trenton. Candidates for the Senior Engineer Transportation (PS4833T) examination were required to answer questions 1-20, 41-80, and 216-240. Candidates for the Senior Engineer Traffic (PS4892T) examination were required to answer questions 1-60, 71-80 and 191-215. Candidates for the Senior Engineer Structural Evaluation (PS4832T) examination were required to answer questions 1-40, 61-70, and 171-190. Candidates for the Senior Engineer Geotechnical (PS4831T) examination were required to answer questions 1-20, 31-50, and 146 and 170. It is noted that the same examination booklet was utilized to test several symbols, as some of the knowledge, skills, and abilities were common to several titles. The appellants achieved passing scores on the subject examinations.

On September 2, 2005, the Director, Division of Selection Services (Selection Services) sent correspondence to the appellants indicating that it had been brought to his attention that they may have cheated when they participated in the subject examinations (see attached). In its investigation of the allegation, the appellants' multiple-choice answer sheets were compared with each other and it was discovered that both appellants selected the same 175 answers to the same 175 questions. In other words, appellants had the same correct and incorrect answers for all 175 questions. Selection Services also found that there were instances where the appellants marked the same answer for a given test item, erased it, and replaced it with another identical response. Specifically, there were nine identical erasures where they had the same answer, erased that answer, and put in another, identical

answer. Further, Ms. Bhavsar changed her answers to another nine items to match Mr. Bhavsar's. Given these circumstances, Selection Services found that it was statistically improbable for one candidate to have made the exact answer selections for 175 test questions as another candidate and determined that the appellants colluded to share answer selections during the test administration. Thus, Selection Services disqualified both appellants from each of the subject promotional lists and advised them that they would be rejected from any future examination for a period of three years, the duration of the subject lists, beginning June 23, 2005.

On appeal, the appellants categorically deny that they cheated and state that they elected to take the subject examinations because they only needed "a good score on [the Senior Engineer Transportation] (PS4833T) [examination] in order to be eligible for promotion." The appellants explain that they took all four examinations in order to ensure that they had "adequate time for the necessary exam."¹ As such, the appellants maintain that they arbitrarily decided to answer "B" for every question on the PS4831T, PS4832T and PS4892T examinations unless the answer was "patently obvious." The appellants maintain that this is why their examinations were identical and argue that it was done intentionally and that they decided to do it before taking the examinations. Further, the appellants present that they agreed to mark "C" on the Senior Engineering Transportation (PS4833T) examination in response to any question that they were not "fairly certain of the answer." In response to the claim that they erased the same initial answer choice and ultimately responded with the same answer choice, the appellants contend that a number of questions, upon first reading, suggested one response, and then, upon more careful examination, suggested a different response. Thus, given that they are both engineers, trained at the same university, and due to the fact that they have worked together in the past, the appellants assert that "they tend to approach problem solving in a similar way." They also state that they studied together in preparation for the examination utilizing the same exam material. Under these circumstances, the appellants request an opportunity to be "retested" on different dates and/or in separate locations to avoid any possibility of the appearance that they cheated.

A review of the Center Supervisor's Report on the Conduct of the Examination was negative for Room C, but did indicate that a candidate in Room E for PS4833T was disqualified for bringing a cell phone into the examination room.

¹ Appellants were serving provisionally in the Senior Engineer Transportation title at the time of the examination. In November 2005, the appellants were returned to their permanent title of Assistant Engineer Transportation.

CONCLUSION

At the outset, the Department of Personnel (DOP) has a duty to ensure the security of the examination process and to provide sanctions for a breach of security. See *N.J.S.A.* 11A:4-1(c). In order to carry out this statutory mandate, *N.J.A.C.* 4A:4-2.10 identifies a number of prohibited actions in the conduct or administration of an examination and provides for the disqualification of candidates participating in such actions. Specifically, *N.J.A.C.* 4A:4-2.10(b)5 prohibits the use or attempted use of any unauthorized aids, information or assistance, including copying or attempting to copy from, or helping or attempting to help another applicant in any part of an examination or performance of work assigned. *N.J.A.C.* 4A:4-2.10(c) provides that anyone participating in a prohibited action shall be disqualified from the examination and may be rejected from future examinations and subject to punishment as provided by law.

In the matter at hand, the appellants argue that they did not cheat, but rather, decided to answer “B” to every question, unless the answer was “patently obvious,” on the PS4831T, PS4832T, and PS4892T examinations so that they would have “adequate time” to answer the questions for the PS4833T examination. Although it is unexplained as to how the appellants knew at the time of the test what technical questions and sub-tests were associated with a particular symbol, it is evident that the appellants, for the most part, responded with a “B” to the majority of questions contained in the third sub-tests that were in fact unique to each of the symbols. Indeed, a review of the appellants’ score sheets demonstrates that they answered “B” on the third sub-test for symbols PS4831T, PS4832T, and PS4892T, for questions 146 to 158, 160 to 202, 206 to 210 and 214 to 215. Moreover, as indicated earlier, the third unique sub-test for the Senior Engineer Transportation (PS4833T) examination required candidates to answer questions 216 to 240. For this sub-test, the appellants responded with eight “B’s,” seven “D’s,” seven “C’s,” and three “A’s.”

Regardless, even considering the appellant’s strategy of answering “B” to the technical questions associated with each specific title in the third sub-test for each symbol, they still both provided identical responses to the remaining 112 questions. The Board concurs with the Selection Services that it is statistically improbable that one candidate could have the exact answer selections for 112 test questions as another candidate. Moreover, given that the appellants participated in the same examination, in the same room, at the same time, and changed the same answer responses for multiple questions, the Board does not accept the appellants’ argument that they achieved the same test result due to their test taking strategy and similar education and work experience. Further, it appears that the appellants

suggest on appeal that they simply applied for the PS4832T, PS4831T, and PS4892T examinations so that the additional time allotted for these examinations could be utilized by them for the PS4833T examination. Indeed, it has been common practice by the Department of Personnel for years to utilize one examination booklet to test multiple titles that may share some common KSAs. Thus, it appears that the appellants have also colluded, by their own admission, to increase the amount of time they had to compete in the PS4833T examination. This, in and of itself, is unfair to the other candidates who competed for the Senior Engineer Transportation title who did not sign up for multiple tests for the sole purpose of increasing the time allotted to compete in that particular test. Clearly, the integrity of the examination process is compromised by such behavior and is unacceptable. This is also contrary to the underlying purpose of the merit system, which is to ensure that all candidates are tested on an equal basis and have a fair opportunity to demonstrate relative merit and fitness. Therefore, it was appropriate to disqualify the appellants from the subject examination and to bar them from any future open competitive or promotional examination to which they apply for the duration of the subject lists.

Given the seriousness of this matter, the Board strongly recommends that the Department of Transportation consider instituting appropriate disciplinary charges against the appellants.

ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.